

Before the  
Federal Communications Commission  
Washington, D.C. 20554

MM Docket No. 92-142

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.  
(Brighton, New York)

RM-8014

**REPORT AND ORDER**  
**(Proceeding Terminated)**

Adopted: January 4, 1993; Released: February 5, 1993

By the Chief, Allocations Branch:

1. At the request of Renard Communications Corp. ("petitioner"), the Commission has before it the *Notice of Proposed Rule Making*, 7 FCC Rcd 4389 (1992), proposing the allotment of Channel 231A to Brighton, New York, as the community's first local FM service. Petitioner filed comments reiterating its intention to apply for the channel, if allotted. West Irondequoit Central School District ("West Irondequoit") filed comments in opposition to which the petitioner responded.

2. West Irondequoit is the licensee of Class D noncommercial educational Station WIRQ, Channel 232, Rochester, New York. If Channel 231A is allotted to Brighton, West Irondequoit would be required to operate Station WIRQ on a different channel as Station WIRQ would cause interference within the Brighton station's protected contour. West Irondequoit is aware that, as a Class D station, it is a secondary service and may continue to operate only so long as it does not provide interference to any primary service. However, it argues that due to the limited available spectrum in the Rochester area, the allotment of Channel 231A to Brighton might, in fact, require Station WIRQ to cease operation. Further, it contends that Brighton is already well served by seven commercial FM, one noncommercial educational AM and five commercial AM stations licensed to Rochester as well as another four FM stations licensed to communities within Monroe County and thus is less in need of another commercial service than the continuation of the educational service provided by Station WIRQ to the student population.

3. West Irondequoit notes that the Brighton allotment also would be short-spaced to two Canadian facilities. Stations CBL-FM, Channel 231C1, Toronto, and CBBB-FM, Channel 232B, Belleville, Ontario and closely spaced to Station WACZ, Channel 230A, Dansville, New York. While it recognizes that the petitioner proposes to restrict its operation in order to provide the required protection to the short-spaced stations, it contends that the degree of short-spacing runs contrary to the standards of sound allotment practice. Further, West Irondequoit charges that neither the petitioner nor the Commission has adequately

shown that the Brighton and Toronto stations will not cause prohibited interference to each other. According to its consulting engineer, West Irondequoit submits that the interference received and caused when measured using actual terrain is greater than that believed to occur when the assumptions are based on uniform terrain. Therefore, it concludes that a Channel 231A Brighton station will be a "second-rate facility at best and one with a far less usable contour distance than a normally-authorized 6 kW/100m AAT facility."

4. Petitioner states that Station WIRQ is a secondary Class D station, and as such, is not entitled to any interference protection from either domestic or Canadian full service stations. Further, while it is true that Station WIRQ will have to relocate to another channel if Channel 231A is allotted to Brighton, petitioner contends that the interference which Station WIRQ will receive from the newly authorized but not yet operational Station CBBB, Channel 232B, Belleville, Ontario, will also result in Station WIRQ being forced to relocate to a new channel. In this regard, petitioner suggests either Channel 298 or Channel 300 as alternatives for Station WIRQ. It also disputes West Irondequoit's claim that the new Brighton station will cause prohibited interference to the Canadian stations to which it is short-spaced, again stating that it can and will adequately protect the affected stations.

5. After reviewing the pleadings before us, we believe the public interest would be served by allotting Channel 231A to Brighton, New York, as the community's first local FM service. First, we find that Brighton is a community for allotment purposes. As stated in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982), community status is presumed to exist if a community is incorporated or listed in the U.S. Census. While this presumption can be rebutted, West Irondequoit provides no showing as why community status should be denied beyond the bald statement that Brighton is not incorporated and "in most respects is a bedroom community" of Rochester. West Irondequoit acknowledges that Brighton is listed in the 1990 Census with a population of 34,455 persons and has its own local government. We also reject West Irondequoit's argument that petitioner has failed to demonstrate why Brighton and not some other unidentified community should receive its first local aural service. The Commission does not require petitioners to provide detailed demographic information at the time of the filing of the petition unless and until it becomes mutually exclusive with another proposal. See *Revision of FM Assignment Policies and Procedures*, *supra*. In this case, the Brighton allotment is not in conflict with any other proposal and thus the petitioner need not submit such information. Further, it is Commission policy to allot channels to communities only upon the affirmative statement that the channel will be applied for and activated in a timely manner. West Irondequoit does not identify any other community which it believes to be more deserving than Brighton and provides no statement of intent to apply for the channel, if allotted.

6. We find that the short-spacing between Channel 231A at Brighton and Channels 231C1 at Toronto and 232B at Belleville, Ontario, Canada, is not an impediment to the adoption of petitioner's proposal. The Commission has determined that the Brighton station can limit its power in

the direction of the Canadian stations to avoid any prohibited interference and Canada has agreed to the proposed allotment.<sup>1</sup>

7. Finally, the fact that the allotment of Channel 231A to Brighton will require Station WIRQ to relocate to another channel is not an impediment to the adoption of petitioner's proposal. As West Irondequoit is aware, Class D stations such as WIRQ, are secondary services and must operate pursuant to the provisions of Section 73.512 of the Commission's Rules. That section states that Class D stations may continue to operate only so long as no interference is caused to any commercial FM broadcast stations. However, as petitioner has suggested, it may be possible for Station WIRQ to relocate to another frequency.

8. Channel 231A can be allotted to Brighton in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.1 kilometers (5 miles) east to avoid a short-spacing to Station WACZ, Channel 230A, Dansville, New York.<sup>2</sup> Canadian concurrence in the allotment of Channel 231A to Brighton, as a specially negotiated allotment, has been received since the community is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

9. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **March 22, 1993**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the "community listed below, to read as follows:

|                    |             |
|--------------------|-------------|
| City               | Channel No. |
| Brighton, New York | 231A        |

10. The window period for filing applications will open on **March 23, 1993**, and close on **April 22, 1993**.

11. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

12. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

#### FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

<sup>1</sup> It is, of course, expected that any Canadian station which would cause prohibited interference to the Brighton station will operate in such a manner as to comply with the relevant

provisions of the U.S.-Canadian FM Working Agreement.

<sup>2</sup> The coordinates for Channel 231A at Brighton are North Latitude 43-08-55 and West Longitude 77-27-04.